

FILED  
U.S. DISTRICT COURT

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**In the United States District Court  
for the District of Utah, Central Division**

DISTRICT OF UTAH

BY: DEPUTY CLERK

Miguel Avalos-Vasquez

Plaintiff,

vs.

United States of America

Defendant.

ORDER DISMISSING  
PETITIONERS 28 U.S.C. § 2255  
COMPLAINT**Case No. 2:07cv420**

On June 25, 2007, the petitioner, Miguel Avalos-Vasquez ("Avalos"), pursuant to 28 U.S.C. § 2255, filed a Motion to Vacate, Set Aside, or Correct his sentence in Case No. 2:04-cr-708 JTG. Currently, Avalos has a direct appeal pending before the Tenth Circuit Court of Appeals challenging this sentence. *See* Docket No. 100 in Case No. 2:04-cr-708 JTG.

The Tenth Circuit has made it clear that, absent extraordinary circumstances, a district court may not consider the merits of a § 2255 motion when the petitioner has a direct pending appeal on the underlying case. *See United States v. Prows*, 448 F.3d 1223, 1228 (10<sup>th</sup> Cir. 2006); *United States v. Cook*, 997 F.2d 1312, 1319 (10<sup>th</sup> Cir. 1993). Indeed, generally, a defendant may not concomitantly seek both direct and collateral relief for the defendant's underlying sentence. *See Cook*, 997 F.2d at 1318-19.

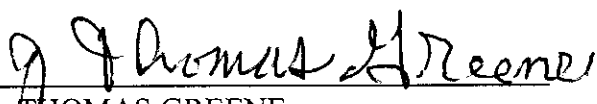
Avalos has presented no extraordinary circumstances under *Prows* or *Cook* which would compel this Court to consider Avalos' § 2255 Motion while his direct appeal is pending

with the Tenth Circuit.

Accordingly, Avalos' § 2255 Motion is **DENIED**.

IT IS SO ORDERED.

DATED this 16<sup>th</sup> day of August 2001

  
J. THOMAS GREENE  
UNITED STATES DISTRICT JUDGE